

AMENDED IN SENATE JUNE 10, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 45

Introduced by Assembly Member Blakeslee

December 1, 2008

An act to add Article 2.11 (commencing with Section 65893) to, and to repeal the heading of Article 2.11 (commencing with Section 65892.13) of, Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as amended, Blakeslee. Distributed generation: small wind energy systems.

The California Renewables Portfolio Standard Program requires that an electrical corporation, as defined, procure a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard), subject to specified limits. The renewables portfolio standard requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

This bill would authorize a local agency to provide, by ordinance, for the installation of small wind energy systems, as specified, and to establish a process for the issuance of conditional use permits for these

systems. The bill would also authorize a local agency to impose conditions on the installation of these systems, but would prohibit the local agency from imposing conditions relating to specified aspects of these systems that are more restrictive than certain specified requirements of, and conditions upon, these systems. The bill would require a local agency that has not adopted an ordinance providing for the installation of these systems, and receives an application for the installation of a small wind energy system after July 1, 2010, but before it adopts an ordinance providing for the installation of these systems, to approve the application through a ~~nondiscretionary administrative action~~ *ministerial permit*. The bill would authorize a local agency to require *as a condition of approval that* a small wind energy system ~~to~~ be removed if it remains inoperable for 12 consecutive months, *and the small wind energy system, at that time, would be subject to nuisance codes and code enforcement action*. The bill would declare that it is the policy of the state to promote and encourage the use of distributed renewable energy systems and to limit obstacles to their use.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 2.11 (commencing with
2 Section 65892.13) of Chapter 4 of Division 1 of Title 7 of the
3 Government Code is repealed.

4 SEC. 2. Article 2.11 (commencing with Section 65893) is
5 added to Chapter 4 of Division 1 of Title 7 of the Government
6 Code, to read:

7
8 Article 2.11. Wind Energy

9
10 65893. (a) The Legislature finds and declares all of the
11 following:

12 (1) Wind energy is an abundant, renewable, and nonpolluting
13 energy resource.

14 (2) Wind energy, when converted to electricity, reduces our
15 dependence on nonrenewable energy resources, reduces air and
16 water pollution that result from conventional sources burning fossil
17 fuels, and reduces emissions of greenhouse gases.

1 (3) Distributed generation small wind energy systems also
2 enhance the reliability and quality of electricity delivered by the
3 electrical grid, reduce peak power demands, increase in-state
4 electricity generation, diversify the state's energy supply portfolio,
5 and make the electricity supply market more competitive by
6 promoting consumer choice.

7 (4) Small wind energy systems designed for onsite home, farm,
8 and small commercial use are recognized by the Legislature and
9 the Energy Commission as an excellent technology to help achieve
10 the goals of increased in-state electricity generation, reduced
11 demand on the state electrical grid, increased consumer energy
12 independence, and nonpolluting electricity generation.

13 (5) It is the intent of the Legislature to encourage local agencies
14 to support the state's ambitious renewable energy procurement
15 requirements by developing and adopting ordinances that facilitate
16 the installation of small wind energy systems and do not
17 unreasonably restrict the ability of homeowners, farms, and small
18 businesses to install small wind energy systems in zones in which
19 they are authorized by local ordinance.

20 (6) ~~The~~ *It is the intent of the Legislature to facilitate the*
21 *implementation of consistent statewide standards to achieve the*
22 *timely and cost-effective installation of small wind energy systems*
23 *is a matter of statewide concern. It is the intent of the Legislature*
24 *that this section apply to all local agencies, including, but not*
25 *limited to, charter cities, charter counties, and charter cities and*
26 *counties: energy systems.*

27 65894. For purposes of this article, the following terms shall
28 have the following meanings:

29 (1) "Energy Commission" means the State Energy Resources
30 Conservation and Development Commission.

31 (2) "Small wind energy system" means a wind energy
32 conversion system consisting of a wind turbine, a tower, and
33 associated control or conversion electronics, ~~which~~ *that* has a rated
34 capacity of not more than 50 kilowatts per customer site, consistent
35 with the requirements of paragraph (3) of subdivision (b) of Section
36 25744 of the Public Resources Code, and that will be used
37 primarily to reduce onsite consumption of utility power.

38 (3) "System height" means *the higher of either the height of the*
39 *tower and the system measured to the top of the blade at the 12*

1 *o'clock position or the highest point of the system extended above*
2 *the existing grade when being operated.*

3 ~~(3)~~

4 (4) "Tower height" means the height above grade of the fixed
5 portion of the tower, excluding the wind turbine.

6 ~~(4)~~

7 (5) "Urbanized area" has the same meaning as set forth in
8 Section 65944.

9 65895. (a) A local agency that has not adopted an ordinance
10 providing for the installation of small wind energy systems located
11 outside an urbanized area, but within the local agency's jurisdiction
12 ~~by January 1, by July 10, 2010,~~ may adopt such an ordinance at a
13 later date, but the ordinance shall be in accordance with Section
14 65896. *Ordinances adopted prior to July 1, 2010, are exempt from*
15 *this article.*

16 (b) A local agency may establish a process for the issuance of
17 conditional use permits for small wind energy systems, subject to
18 all of the following conditions:

19 (1) A local agency shall review an application for a small wind
20 energy system ~~as expeditiously as possible~~ pursuant to the timelines
21 established in the Permit Streamlining Act (Chapter 4.5
22 (commencing with Section 65920)).

23 (2) Fees charged by a local agency to review an application for
24 a small wind energy system shall be determined in accordance
25 ~~with Chapter 5 (commencing with Section 66000) Sections 66014~~
26 ~~and 66016.~~

27 (3) An application for the installation of a small wind energy
28 system submitted between July 1, 2010, and the date of the local
29 agency's adoption of an ordinance that meets the requirements
30 and conditions of subdivision (b) of Section 65896 shall be
31 approved through a ~~nondiscretionary administrative action by a~~
32 *ministerial permit by the local agency.*

33 65896. (a) A local agency may by ordinance, provide for the
34 installation of small wind energy systems outside an urbanized
35 area, but within the local agency's jurisdiction.

36 (b) The ordinance may impose conditions on the installation of
37 small wind energy systems that include, but are not limited to,
38 notice, tower height, setback, view protection, aesthetics, aviation,
39 ~~and design-safety~~ *design-safety* requirements. However, the
40 ordinance shall not require conditions on notice, tower height,

1 setback, noise level, visual effects, turbine approval, tower
2 drawings, and engineering analysis, or line drawings that are more
3 restrictive than the following requirements and conditions:

4 (1) The parcel where the system is located shall be at least one
5 acre in size and located outside an urbanized area.

6 (2) Tower heights of not more than ~~100 feet shall be allowed~~
7 ~~on parcels between one and five acres. On parcels of five acres or~~
8 ~~more, tower height 80 feet shall be allowed on parcels between~~
9 ~~one and five acres. Tower heights of not more than 100 feet shall~~
10 ~~be allowed on parcels above five acres. All tower heights shall not~~
11 exceed the applicable limits established by the Federal Aviation
12 Administration. An application shall include evidence that the
13 proposed height of a tower does not exceed the height
14 recommended by the manufacturer or distributor of the system.

15 (3) Setbacks for the system tower shall be no farther from the
16 property line than the ~~height of the system, provided the system~~
17 ~~system height, provided the system also~~ complies with applicable
18 fire setback requirements set forth in Section 4290 of the Public
19 Resources Code.

20 (4) Decibel levels for the system shall not exceed the lesser of
21 60 decibels (dBA), or any existing maximum noise levels applied
22 pursuant to the noise element of a general plan for the applicable
23 zoning classification in a jurisdiction, as measured at the ~~closest~~
24 ~~neighboring inhabited dwelling~~ *nearest property line*, except during
25 short-term events, such as utility outages and severe ~~wind storms~~
26 *windstorms*.

27 (5) Notice of an application for installation of a small wind
28 energy system shall be provided to property owners within 300
29 feet of the property on which the system is to be located.

30 (6) The system shall not substantially obstruct views of adjacent
31 property owners and shall be placed or constructed below any
32 major ridgeline when visible from any scenic highway corridor
33 designated pursuant to Article 2.5 (commencing with Section 260)
34 of Chapter 2 of Division 1 of the Streets and Highways Code or
35 any scenic highway corridor designated by a local agency general
36 plan.

37 (7) The system shall use a wind turbine that has been approved
38 by the Energy Commission as qualifying under its Emerging
39 Renewables Program pursuant to Section 25744 of the Public

1 Resources Code or has been certified by a national program
2 recognized and approved by the commission.

3 (8) The application shall include standard drawings and an
4 engineering analysis of the system's tower, showing compliance
5 with the ~~Uniform Building Code~~ or *current version of the*
6 California Building Standards Code and certification by a
7 professional mechanical, structural, or civil engineer licensed by
8 this state. A wet stamp, however, shall not be required if the
9 application demonstrates that the system is designed to meet the
10 most stringent wind requirements (Uniform Building Code wind
11 exposure D), the requirements for the worst seismic class (Seismic
12 4), and the weakest soil class, with a soil strength of not more than
13 1,000 pounds per square foot, or other relevant conditions normally
14 required by a local agency.

15 (9) The system shall comply with all applicable Federal Aviation
16 Administration requirements, including Subpart B (commencing
17 with Section 77.11) of Part 77 of Title 14 of the Code of Federal
18 Regulations regarding installations close to airports, and the State
19 Aeronautics Act (Part 1 (commencing with Section 21001) of
20 Division 9 of the Public Utilities Code). A system that complies
21 with this subdivision shall be deemed to meet the applicable health
22 and safety requirements regarding civil aviation.

23 (10) The application shall include a line drawing of the electrical
24 components of the system in sufficient detail to allow for a
25 determination that the manner of installation conforms to the
26 National Electric Code.

27 (11) If required by the local agency, the applicant shall provide
28 information demonstrating the system will be used primarily to
29 reduce onsite consumption of electricity. The local agency may
30 also require the application to include evidence, unless the applicant
31 does not plan to connect the system to the electricity grid, that the
32 electric utility service provider that serves the proposed site has
33 been informed of the applicant's intent to install an interconnected
34 customer-owned electricity generator.

35 (12) If the governing authority of the restricted military airspace
36 known as "R-2515" files a detailed diagram of that restricted
37 military airspace with a local agency, and if a local agency receives
38 an application to install a small wind energy system on a site that
39 is within that restricted military airspace, then the local agency
40 shall promptly forward a copy of that application to the governing

1 authority of that restricted military airspace. If the governing
2 authority of the restricted military airspace known as “R-2515”
3 provides written comments regarding that application, the local
4 agency shall consider those comments before acting on the
5 application.

6 (13) If a small wind energy system is proposed to be sited in an
7 agricultural area that may have aircraft operating at low altitudes,
8 the local agency shall take reasonable steps, concurrent with other
9 notices issued pursuant to this subdivision, to notify pest control
10 aircraft pilots registered to operate in the county pursuant to Section
11 11921 of the Food and Agricultural Code.

12 (14) Tower structure lighting shall be prohibited unless
13 otherwise required by another provision of law *or pursuant to*
14 *paragraph (13)*.

15 (15) No climbing apparatus attached to the system shall be
16 located less than 12 feet above the ground, and the system shall
17 be designed to prevent climbing within the first 12 feet.

18 (16) No sign shall be attached to the system if visible from a
19 public road, except for manufacturer or ~~installer identification~~
20 ~~signs, owner identification signs, or public health~~
21 *installer-identification signs, owner-identification signs, or*
22 *public-health* and safety signs applicable to the installed system,
23 *but in no case shall the signs be larger than four square feet and*
24 *located at the base of the system within 10 feet of the ground*
25 *surface unless approved by the city or county.*

26 (17) A small wind energy system shall not be allowed where
27 otherwise prohibited by any of the following:

28 (A) A local coastal program and any implementing regulations
29 adopted pursuant to the California Coastal Act (Division 20
30 (commencing with Section 30000) of the Public Resources Code).

31 (B) The California Coastal Commission, pursuant to the
32 California Coastal Act (Division 20 (commencing with Section
33 30000) of the Public Resources Code).

34 (C) The regional plan and any implementing regulations adopted
35 by the Tahoe Regional Planning Agency pursuant to the Tahoe
36 Regional Planning Compact (Title 7.4 (commencing with Section
37 66800)).

38 (D) The San Francisco Bay Plan and any implementing
39 regulations adopted by the San Francisco Bay Conservation and

1 Development Commission pursuant to the McAteer-Petris Act
2 (Title 7.2 (commencing with Section 66600)).

3 (E) A comprehensive land use plan and any implementing
4 regulations adopted by an airport land use commission pursuant
5 to Article 3.5 (commencing with Section 21670) of Chapter 4 of
6 Division 9 of Part 1 of the Public Utilities Code.

7 (F) The Alquist-Priolo Earthquake Fault Zoning Act (Chapter
8 7.5 (commencing with Section 2621) of Division 2 of the Public
9 Resources Code).

10 (G) A local agency to protect the scenic appearance of the scenic
11 highway corridor designated pursuant to Article 2.5 (commencing
12 with Section 260) of Chapter 2 of Division 1 of the Streets and
13 Highways Code *or pursuant to scenic highways designated in the*
14 *local general plan.*

15 (H) The terms of a conservation easement entered into pursuant
16 to Chapter 4 (commencing with Section 815) of Division 2 of Part
17 2 of the Civil Code.

18 (I) The terms of an open-space easement entered into pursuant
19 to the Open-Space Easement Act of 1974 (Chapter 6.6
20 (commencing with Section 51070) of Division 1 of Title 5).

21 (J) The terms of an agricultural conservation easement entered
22 into pursuant to the California Farmland Conservancy Program
23 Act (Division 10.2 (commencing with Section 10200) of the Public
24 Resources Code).

25 (K) The terms of a contract entered into pursuant to the
26 Williamson Act (Chapter 7 (commencing with Section 51200) of
27 Division 1 of Title 5).

28 (L) The listing of the proposed site in the National Register of
29 Historic Places or the California Register of Historical Resources
30 pursuant to Section 5024.1 of the Public Resources Code.

31 (c) A local agency may, if it deems it necessary due to
32 circumstances specific to the proposed installation, provide notice
33 by placing a display advertisement of at least one-eighth of a page
34 in at least one newspaper of general circulation within the local
35 agency in which the installation is proposed.

36 (d) A local agency may require ~~a small wind energy system to~~
37 *as a condition of approval that a small wind energy system be*
38 *removed if it remains inoperable for 12 consecutive months, and*
39 *at that time the small wind energy system shall be subject to*
40 *nuisance codes and code enforcement action.*

1 65897. It is the policy of the state to promote and encourage
2 the use of distributed renewable energy systems and to limit
3 obstacles to their use, and it is the intent of the Legislature that
4 local agencies encourage the installation of distributed renewable
5 energy systems by removing obstacles to, and minimizing costs
6 of, permitting distributed renewable energy systems.

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